

IN THE CIRCUIT COURT OF UNION COUNTY, ARKANSAS

LOUISIANA COMMERCE & TRADE ASSOCIATION, SELF
INSURERS FUND
C/O The McHughes Law Firm, LLC
P.O. Box 2180
Little Rock, AR 72203

PLAINTIFF

vs.

No. 7001-15-436-6

WEST FRASER, INC.
124 WEST CAPITOL AVENUE
SUITE 1900
LITTLE ROCK, AR 72201

DEFENDANT

COMPLAINT

Comes the Plaintiff, Louisiana Commerce & Trade Association, Self Insurers Fund (hereinafter referenced to as "LCTA-SIF", by and through its attorney, The McHughes Law Firm, PLLC, and for its cause of action against the Defendant, West Fraser, Inc., states and alleges:

(1)

That the Plaintiff , "LCTA-SIF" is a Louisiana Workers' Compensation Self Insurers Fund, organized pursuant to the Louisiana Workers' Compensation Act, for the purpose of providing coverage and indemnification to its members for workers compensation benefits to the members employees. Defendant, West Fraser, Inc. is a foreign corporation doing business in Hattig, Arkansas, Union County, Arkansas, giving this court proper jurisdiction and venue.

(2)

On March 18, 2010 Adam Davis, Jr. was employed by Kentwood Brick and Tile Manufacturing Company, Inc. "hereinafter referenced as Kentwood" as a truck driver. At all times pertinent hereto Kentwood was a member of the Plaintiff, LCTA-SIF, a Louisiana Self-Insurers Fund.

(3)



FILED
11-16-15 3:23 PM
CHERYL COGHRAN - WILSON, CLERK
BY D. COOPER D.C.

On March 18, 2010 Adam Davis, Jr., while acting within the scope of his employment with Kentwood as a truck driver, was on the property of West Fraser, Inc., in the town of Hattig, within Union County, Arkansas to pick up a load of limber. Adam Davis, Jr. was standing outside of his truck talking to another driver, when suddenly and without warning a forklift driver employed by West Fraser, Inc., operating a forklift owned by the Defendant, West Fraser, Inc., came around the corner and hit him, knocking him to the ground, where he remained until removed by first responders to a medical facility.

(4)

The acts and/or admissions of negligence of Defendant, West Fraser, Inc., as set out herein, separately and collectively, were the direct and proximate cause of the injuries and damages sustained by Adam Davis, Jr. The acts and omissions of negligence among others are as follows:

- a) In failing to exercise ordinary care in the hiring of competent employees;
- b) In the failing to exercise ordinary care in the supervision and management of employees;
- c) In failing to properly investigate potential job applicants;
- d) In failing to implement adequate safeguards to prevent the situation that resulted in Plaintiff's damages sustained by Adam Davis, Jr. herein;
- e) In failing to provide adequate oversight for employees which proximately caused the damage sustained by Adam Davis, Jr. herein.

Each of these acts and omissions, taken singularly or in combination with others constitutes negligence and the direct and proximate cause of the injuries and damages sustained by Adam Davis, Jr.

(5)

At the time of the occurrence of the act in question and immediately prior thereto, the driver of the forklift was within the course and scope of employment for Defendant, West Fraser, Inc. At the time of the occurrence of the act in question and immediately prior thereto, the driver was engaged in the furtherance of Defendant, West Fraser, Inc.'s business. At the time of the occurrence

of the act in question and immediately prior thereto, the forklift driver was engaged in accomplishing a task for which he was employed. Under the doctrine of Respondeat Superior the Defendant, West Fraser, Inc. is liable for its employees negligence in the operation of the forklift namely a failing to operate it in a safe and prudent manner and failing to keep proper lookout for others.

(6)

As a result of the alleged aforesaid incident, Plaintiff, "LCTA-SIF" paid to Davis, on behalf of its member, Kentwood, wage indemnity and medical benefits, as required by the Louisiana Worker's Compensation Act. "LCTA-SIF", further avers that compensation benefits to Davis may extend into the future for a indefinite period of time. Under the terms of the provision of the Louisiana Worker's Compensation act, which is substantive law and thus should be applied as the law in this Honorable Court, Plaintiff is entitled to recover from defendant the full amount of compensation benefits and medical expenses which may have been paid by Plaintiff as aforesaid, which Plaintiff may be presently obligated to pay, and which Plaintiff may have to pay in the future under the Louisiana Worker's Compensation Act. Pursuant to the Louisiana Workers Compensation Act, Plaintiff is entitled to subrogate, and or recover of, the amount of workers compensation benefits that it has paid to, or on behalf of Adam Davis from the third party tort feasor and defendant herein, West Frazer.

(7)

Plaintiff, "LCTA-SIF", has thus far paid approximately \$76,900.50 in wage indemnity benefits, and \$64,498.38 in medical benefits to or on behalf of Adam Davis, Jr. and is subrogated, and or entitled to recover said amounts.

WHEREFORE, premises considered, Plaintiff prays that Defendant be summoned to appear and answer, that upon final hearing, Plaintiff have Judgment against the Defendant for;

- a) \$141,398.88 in workers' compensation benefits paid to or on behalf of Adam Davis,

which is the balance due;

- b) any additional workers' compensation benefits paid to, or on behalf of Adam Davis;
- c) post judgment interest at 10%;
- d) attorney's fees in the amount to be determined by the court;
- e) all cost of court; and
- f) all such other just and proper relief to which Plaintiff may be entitled.

The McHughes Law Firm, P.L.L.C.
Attorneys at Law
P.O. Box 2180
Little Rock, Arkansas 72203
(501) 376-9131

Original signed by
Josh E. McHughes

THE McHUGHES LAW FIRM, PLLC
Josh E. McHughes (67040)
josh@mchugheslaw.com
Becky A. McHughes (03024)
becky@mchugheslaw.com
Christopher D. Anderson (1991255)
chris@mchugheslaw.com
Our File# 44223